

1 John B. Sganga, Jr. (SBN 116,211)
john.sganga@kmob.com
2 Douglas G. Muehlhauser (SBN 179,495)
doug.muehlhauser@kmob.com
3 Perry D. Oldham (SBN 216,016)
perry.oldham@kmob.com
4 Mark Lezama (SBN 253,479)
mark.lezama@kmob.com
5 Alan G. Laquer (SBN 259,257)
alan.laquer@kmob.com
6 KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street
7 Fourteenth Floor
Irvine, CA 92614
8 Phone: (949) 760-0404
Facsimile: (949) 760-9502
9
10 Attorneys for Plaintiff
NOMADIX, INC.
11
12

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 NOMADIX, INC.,

17 Plaintiff,

18 v.

19 HEWLETT-PACKARD COMPANY et
20 al.,

21 Defendants.

22 AND RELATED COUNTERCLAIMS
23
24
25
26
27
28

) Civil Action No.

) CV09-08441 DDP (VBKx)

) **[PROPOSED] AMENDED
SCHEDULING ORDER**

) Honorable Dean D. Pregerson

1 The parties have largely agreed on a proposed schedule except for
2 discovery cut-off dates. The parties' alternate proposals are highlighted in
3 yellow in the table below.

4 **A. Nomadix's Proposal**

5 The parties both propose that expert reports be disclosed in September
6 2011 and that other discovery such as expert depositions extend until November
7 10, 2011. Nomadix thus proposes a November 10, 2011 discovery cut-off date
8 for all discovery, including both fact and expert discovery, in accordance with
9 the Court's instructions in the first scheduling order:

10 [A]ll discovery, including expert depositions, must be completed
11 prior to the discovery cut-off date. All discovery motions must be
12 heard prior to the discovery cut-off date.

13 Docket No. 140.

14 **B. The Defendants' Proposal**

15 Defendants propose that August 18, 2011 (but no less than 60 days after
16 entry of a claim construction order) be the cut-off date for fact discovery.
17 Defendants further propose that the cut-off date for completing expert discovery
18 be November 10, 2011 (but no less than 35 days after rebuttal expert reports).

19 The complete instruction from the Court's first scheduling order states as
20 follows:

21 Counsel must agree on the date for the disclosure of expert
22 witness reports pursuant to the Federal Rules of Civil Procedure
23 26(a)2. The agreed-upon disclosure date must precede the discovery
24 cut-off date such that all discovery, including expert depositions,
25 must be completed prior to the discovery cut-off date. All
26 discovery motions must be heard prior to the discovery cut-off
27 date. Counsel are ordered to abide by the dates as set forth in
28

the Rule 26 (f) Report.

Docket No. 140. When read in context of the full order, Defendants believe that the Court's instruction in the first scheduling order cited to in Nomadix's proposal above referred to an expert discovery cut-off date and did not refer to the close of all discovery. The defendants believe that separate discovery cut-off dates will streamline the expert discovery process.

* * *

ORDER

The Court hereby resets certain dates set forth in its first scheduling order (Docket No. 140), confirms dates in its December 14, 2010 order (Docket No. 218), and sets certain new deadlines. The parties shall abide by the following dates:

No.	Matter	Nomadix's Proposal	Defendants' Proposal
1.	Deadline for identifying reduced set of disputed claim terms	February 15, 2011 Agreed	
2.	Revised joint claim construction statement with reduced set of disputed claim terms	February 18, 2011 Agreed	
3.	Close of claim construction discovery; by this date, any party intending to rely upon a witness or declarant during the claim construction hearing or briefing must make such witness or declarant available for deposition	February 25, 2011 Agreed	
4.	Opening claim construction briefs by any party asserting a patent	March 4, 2011 Agreed	

No.	Matter	Nomadix's Proposal	Defendants' Proposal
5.	Deadline for good faith effort to reduce number of asserted claims	April 6, 2011 Agreed	
6.	Responsive claim construction briefs by any party defending a patent infringement claim (such parties each permitted a separate responsive brief for each opening brief to which they are responding)	April 8, 2011 Agreed	
7.	Reply claim construction briefs by any party asserting a patent	April 29, 2011 Agreed	
8.	Technology tutorial	May 12, 2011 at 9:00 a.m. Agreed	
9.	Claim construction hearing	May 19, 2011 at 9:00 a.m. Agreed	
10.	Non-judicial dispute resolution proceeding to be conducted	28 to 35 days after claim construction order Agreed	
11.	Deadline for parties to disclose whether they are relying on advice of counsel as part of a claim or defense, and, if so, to produce all documents and materials constituting or embodying such advice, to produce a written summary of any such oral advice, and to produce any additional documents and materials whose privilege and/or immunity protection is thereby waived	30 days after claim construction order Agreed	

No.	Matter	Nomadix's Proposal	Defendants' Proposal
12.	Identification of any experts expected to offer any opinion in a written expert report	June 24, 2011 Agreed	
13.	[Defendants' proposal] Close of fact discovery	Nomadix disagrees	August 18, 2011 (but no less than 60 days after entry of a claim construction order)
14.	Exchange of opening expert witness reports for those parties with the burden of proof	September 8, 2011	September 8, 2011 (but no less than 21 days after close of fact discovery)
15.	Exchange of rebuttal expert witness reports	September 29, 2011	September 29, 2011 (but no less than 21 days after opening expert reports)
16.	[Nomadix's proposal] Close of fact discovery	November 10, 2011	Defendants disagree
17.	Close of expert discovery	November 10, 2011	November 10, 2011 (but no less than 35 days after rebuttal expert reports)
18.	Deadline for dispositive or partially dispositive motions (not including motions <i>in limine</i>)	December 1, 2011 Agreed	
19.	Deadline for motions <i>in limine</i>	January 6, 2012 Agreed	
20.	File memorandum of contentions of fact and law; joint exhibit list; witness list	February 23, 2012 Agreed	

No.	Matter	Nomadix's Proposal	Defendants' Proposal
21.	Lodge final pretrial conference order	March 8, 2012 Agreed	
22.	Proposed jury instructions; joint statement of the case	March 12, 2012 Agreed	
23.	Final pretrial conference	March 19, 2012 Agreed	
24.	Start of trial	April 3, 2012 Agreed	

IT IS SO ORDERED.

Dated: _____

Honorable Dean D. Pregerson